



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 10/717,401 | 11/19/2003 | Randall J. Huebner | ACM 354 | 7508 |
| 23581 | 7590 | 09/01/2006 | | |
| KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204 | | | EXAMINER RAMANA, ANURADHA | |
| | | | ART UNIT 3733 | PAPER NUMBER |

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,401

Applicant(s)

HUEBNER ET AL.

Examiner

Anu Ramana

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57 and 74-89 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57 and 74-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The indicated allowability of claims 57 and 74-89 is being withdrawn in view of the rejections made in this office action. The Examiner apologizes for any inconvenience caused to the Applicants by this action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 57, 74, 77-78, 80 and 84-89 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry (US 5,766,174).

Perry discloses a bone plate 76 structured to be secured to bone, a plurality of predefined positions 32a, 32b, connective features 36a, 36b, a guide device 24 structured to attach to the bone plate and extend around the bone so that the guide portion opposes the bone plate and defines a guide axis for the connective features of the bone plate, and a guide element or removable cannula 31 defining the guide axis (Figs. 1- 3, col. 2, lines 66-67, col. 3, lines 1-19 and lines 60-67 and col. 4, lines 1-58).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 75 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry (US 5,766,174) in view of Talos et al. (US 5,709,686).

Perry discloses all elements of the claimed invention except for threaded holes.

Talos et al. teach threaded holes in a plate to seat a bone screw that has a threaded head.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided threaded holes 36a, 36b in the Perry plate to seat a bone screw with a threaded head, as taught by the Talos et al. reference, for vertically and rigidly screwing screws into the plate.

Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perry (US 5,766,174) in view of Shichman (US 5,217,441).

Perry discloses all elements of the claimed invention except for indicia on the guide element.

Shichman teaches indicia on a guide tube or "sleeve" 12 to indicate the depth of penetration of the sleeve (Fig. 1 and col. 5, lines 50-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided indicia on the Perry guide element, as taught by Shichman, to determine the depth of penetration of the guide element.

Claims 81-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry (US 5,766,174) in view of Oxland et al. (US 5,676,666).

Perry discloses all elements of the claimed invention except for a detent mechanism to restrict movement of the guide element within the guide portion.

Oxland et al. teach a detent mechanism (84, 86 and 88) that allows the depth of guide elements relative to a guide portion 72 to be selected.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a detent mechanism on the Perry guide element, as taught by Oxland et al., to restrict movement of the guide element relative to the guide portion.

Conclusion

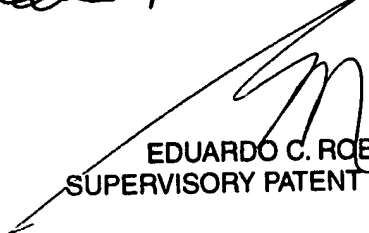
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR
August 28, 2006



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER